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November 23, 2004

TELECOMMUNICATIONS FILED NOV 2 4 2004 APSC

SECRETARY Filed NOV 2 3 2004 APSC

Walter Thomas, Secretary
Alabama Public Service Commission
P. O. Box 304260
Montgomery, AL 36130-4260

RE: IN RE: PROPOSED REVISIONS TO THE PRICE REGULATION AND LOCAL COMPETITION PLAN; DOCKET 28590

Dear Mr. Thomas:

Pursuant to the Commission's November 4, 2004 order, enclosed herein for filing with your office are the original and ten copies of Comments of Knology of Alabama, Inc., in the above-referenced matter.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Kim H. Adams

KIMBERLY H. ADAMS

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Attachment

Before the
Alabama Public Service Commission
Montgomery, AL 36130

APSC Proceeding RE:	)	
	)	
Proposed Revisions to the Price Regulation and Competition Plan	)	Docket No. 28590
	)	

COMMENTS OF KNOLOGY OF ALABAMA, INC.

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400 South Union Street
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Telephone: (334) 265-0098

On Behalf Of:
Knology of Alabama, Inc.

Dated: November 23, 2004

Before the
Alabama Public Service Commission
Montgomery, AL 36130

APSC Proceeding RE:	)	
	)	
Proposed Revisions to the Price Regulation and Competition Plan	))	Docket No. 28590

COMMENTS OF KNOLOGY OF ALABAMA, INC.

Knology of Alabama, Inc. ("Knology") hereby submits these comments in response to the Alabama Public Service Commission's ("Commission") *Order Seeking Comments on the Revised ATRP* in the above-captioned proceeding.[1] The revised CLEC Flexibility Plan ("CLEC Plan") is an flawed regulatory scheme that misapplies universal economic principles and must otherwise be rejected by the Commission because of inconsistencies with Federal and state law.[2] The CLEC Plan violates Section 253 of the Communications Act, as amended,[3] because the plan has the effect of prohibiting the ability of Knology and other CLECs to provide interstate and intrastate telecommunications service and, if adopted, would be subject to preemption by the

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[1] *APSC Proceeding RE Proposed Revisions to the Price Regulation and Local Competition Plan*, Docket No. 28590, Order Seeking Comments on Revised ATRP (Alabama Public Service, Nov. 5, 2004) ("*Order*").

[2] Specifically, the following parts of the CLEC Plan, if adopted, would offend basic economic principles, violate Federal law, and/or be inconsistent with this Commission's stated objectives: Tariff Rules (imposing cumbersome and unnecessary extensive notification requirements for changes to and elimination of service offerings); Pricing Rules (establishing unnecessary price floors on CLECs and inappropriately apply TSLRIC methodology to CLECs and requiring unjustifiably burdensome cost studies or other procedures to prove cost); Contract Service Arrangement Rules (imposing unjustifiably burdensome CSA requirements given CLEC's lack of market power); Promotions Rules (subjecting promotions to unnecessary Commission review, requiring unnecessary break-down of regulated and unregulated services included in bundles, and imposing unnecessary restrictions on customer value programs); Service Quality Rules (imposing unnecessary service quality regulations on CLECs and imposing unjustifiable price penalties for noncompliance); and Reporting Rules (requiring monthly reporting when annual reporting is sufficient). A proposed revised plan is attached to these comments as Attachment A ("Revised CLEC Plan").

[3] Communications Act of 1934, as amended, 47 U.S.C. § 253 (2004).

Federal Communications Commission ("FCC"). Moreover, this Commission should reject the CLEC Plan due to gross inconsistencies with this Commission's stated objectives for local competition and adopt the Revised CLEC Plan attached hereto instead.

INTRODUCTION AND BACKGROUND

The Telecommunications Act of 1996.[4] Congress enacted the Telecommunications Act of 1996 ("1996 Act") to initiate competition in local and long-distance telephone markets by "lifting the shackles of monopoly regulation."[5] Through the 1996 Act, Congress sought to establish "a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all markets to competition."[6] A central theme of the 1996 Act is that competition is the best regulator of the marketplace, and "until that competition exists, monopoly providers of services must not be able to exploit their monopoly."[7] Thus, the 1996 Act aimed to eliminate barriers to entry to the local telephone market caused by large monopolies.[8] According to the FCC, "the ultimate goal of the 1996 Act is the deregulation of these markets that historically have been regulated, in large part by state commissions, when justified by the presence of competition."[9]

In adopting the 1996 Act, Congress recognized the traditional jurisdiction of individual states to regulate local telephone service and insured against state regulations that pose barriers

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[4] Telecommunications Act of 1996, Pub. L. 104-104, Title VII, Feb. 8, 1996, 110 Stat. 153 ("1996 Act").
[5] H.R. Rep. No. 104-204, at 48 (1995).
[6] S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996) (Conference Report) (emphasis added).
[7] *See, e.g.*, S. Rep. No. 23, 104th Cong., 1st Sess. at 67 (1995) (Senate Report) (additional views of Senator Hollings).
[8] For instance, the interconnection, unbundling and resale provisions included in the 1996 Act required entrenched local exchange carriers to open facilities and sell parts of their network to new rivals offering competing local phone services. *See* 47 U.S.C. § 251.
[9] *In re Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, 13 FCC Rcd 3460 (1997).

to new firms seeking to enter the local telephone market.[10] Section 253 of the 1996 Act provides that no state or local regulation shall have the effect of prohibiting entry of a competitor into a local phone market.[11] Section 253 also provides that if the FCC determines that a state or local regulation prohibits entry of a competitor into a local market, then the FCC shall preempt enforcement of that regulation.[12]

The Origins of Local Competition in Alabama. The Alabama Public Service Commission adopted its plan to implement local competition in September of 1995.[13] In doing so, the Commission identified, among others, the following objectives: to create an environment in which fair and effective local competition flourishes; to encourage the introduction of new technology and modern services in all areas of Alabama; to streamline regulatory procedures where feasible, which might encumber new entrants and incumbent providers of telecommunications services in the transition to a competitive marketplace; and to develop a plan which is dynamic and capable of responding to changes in legislation, new ideas, and evolving market conditions.[14] Almost nine years later, the Commission Staff, through this proceeding proposes alternative forms of regulation for all varieties of telecommunications providers, including a form of regulation for CLECs, which if adopted, would vastly alter the incentives for new entrants to the market for local telephone service in Alabama.

Knology. Knology is the embodiment of what Congress envisioned with the 1996 Act by delivering on Congress' promise of universal service and the deployment of advanced

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[10] *See* 47 U.S.C. § 253.
[11] *See* 47 U.S.C. § 253(a).
[12] *See* 47 U.S.C. § 253(d).
[13] *See Petition of South Central Bell, et al.*, Report and Order, Docket No. 24499 (Alabama Public Service Commission, September 20, 1995).
[14] *Id.*

services to all Americans, including Alabama consumers.[15] Knology also answers this Commission's call for increased competition implicit in the Alabama Commission's stated objectives for local competition. Knology, headquartered in West Point, Georgia, is a leading provider of interactive communications and entertainment services, including telephone, broadband Internet access and cable, in the Southeast United States. Knology serves both residential and business customers in urban, suburban and rural areas, over one of the most technologically-advanced broadband networks in the country.

Specifically, Knology has invested in excess of $175 million in state-of-the-art Broadband Networks in Huntsville and Montgomery, Alabama. These networks are high speed, high capacity, and two-way interactive. The networks are hybrid fiber – coaxial networks with redundant fiber optic cable to increase reliability, thus providing an alternate route for signals to travel if network problems arise. In addition, Knology provides power to its system from locations along the network called hub sites, each of which is equipped with a generator and battery back-up power source to allow service to continue during a power outage. Knology's interactive broadband networks support numerous channels of basic and premium cable television services, telephone services, Internet access and other broadband communications services. Knology's networks have extra capacity, ready for upgrade as content and technology become available.

Knology's advanced fiber optic network allows for sophisticated network performance monitoring, increasing service reliability and continual network optimization. Knology's innovative offerings include over 200 channels of digital cable television, internet access through cable modem; and for its telephone customers, the latest enhanced voice messaging features.

[15] *See* 47 U.S.C. § 157 nt. (Congress explicitly tasked the Commission to encourage the deployment on a reasonable and timely basis of broadband capabilities to all Americans).

Knology delivers state-of-the-art competitive telephone, cable and Internet access service alternatives to Alabama consumers.

DISCUSSION

The Staff's proposed CLEC Plan, consisting of a host of barriers to entry, is flawed in that it misapplies basic economic principles, and in doing so, threatens to eliminate competition as a natural regulator of the market for local telephone service. The CLEC Plan, if adopted without revision, would unjustifiably burden competitors with unnecessary regulations specifically engineered to eliminate monopoly power—when not one iota of monopoly power exists. The CLEC Plan's many barriers to entry to both interstate and intrastate telecommunications markets would plainly violate Section 253 of the Communications Act. In addition to these inherent flaws and susceptibility to FCC preemption, the CLEC Plan flies in the face of this Commission's stated objectives for local competition. For all of these reasons, this Commission should reject the CLEC Plan and adopt the "Revised CLEC Plan," provided at Attachment A.

A. The CLEC Plan is Inconsistent with Basic Economic Principles.

The CLEC Plan is grounded in misapplications of basic economic principles and, as a result, would effectively preserve incumbent market share rather than deliver the benefits of competition to Alabama consumers. Knology and similar competitive providers have a miniscule market share when compared with incumbents. As a result, in order to increase their customer base, CLECs must distinguish their products by pricing competitively, and offering a superior service quality in terms of reliability and customer service. Competitive entry has been proven to have the effect of lowering the prices and improving the quality and expansiveness of the incumbent's service offerings. As a result, the imposition of regulation, necessary to curb incumbent exploitation of monopoly power, on new entrants is superfluous and would serve only to impede competition.

The Pricing and Service Quality Rules are examples of the CLEC Plan's lack of foundation in economic principles. For instance, the Service Quality Rules impose a price penalty[16] for failure to meet a particular service standard. This requirement is superfluous, for the greatest penalty to a CLEC would be for it to lose customers as a result of actual/perceived inferior service.

The Pricing Rules also lack a sound economic foundation. These rules require CLECs, absent specific Commission approval, to set prices for "any new or existing service"[17] at or above a cost proxy. These rules impose a ***price floor*** on competitive service offerings using TSLRIC, a methodology intended for simulating the costs of a regulated incumbent network. Price floors, however, are unnecessary for firms like CLECs with insignificant market power, especially given that both Alabama and Federal antitrust laws already prevent predatory pricing.[18] Only a firm that enjoys market power would be in a position to recoup lost profits, sacrificed by the implementation of below cost prices, by subsequent implementation of an above-market monopoly pricing scheme.

The Pricing Rules, including the use of TSLRIC as a CLEC price floor, fails to incorporate economies of scale associated with bundled voice, video and data services. For instance, Knology's investment in state-of-the-art networks is justified by anticipated revenue

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[16] *See* Service Quality Rules at Section 7A.
[17] The absence of a clear definition of the services subject to this regulation poses serious concern over whether by adopting the CLEC Plan, the Commission would be exceeding its jurisdiction by regulating interstate and/or information services *See Memorandum Opinion and Order, Matter of Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No 03-211, FCC 04-267 (rel. Nov 12, 2004).
[18] *See, e g , RE Competitive Telecommunications Environment*, Docket No. 97R-177T, Decision No. C97-1204 (Colorado Public Utilities Commission, Nov. 19, 1997) (declining to adopt a Price Flexibility Plan for CLECs).

streams from selling in bundles, three separate services provisioned over the same network. The Pricing Rules, if adopted, would discourage investment in these types of innovative networks.

Moreover, the application of TSLRIC to CLECs is misplaced because CLECs that provide service through UNEs or resale have no network to cost out using TSRLIC, so the requirement would discriminately fall on facilities-based CLECs. The CLEC Plan's alternative for when a TSLRIC study is not available, the so-called "surrogate for the TSLRIC,"[19] is not only ambiguous to a fault, but also introduces the potential for further disparate treatment. While suffering the above flaws, the Pricing Rules require CLECs to devote time and resources to the creation of a cost study and potential related litigation.

B. The CLEC Plan, If Adopted, Would Violate Section 253 of Act and Be Subject to FCC Preemption.

As stated above, the CLEC Plan's Pricing, Promotions, Service Quality and Reporting Rules, if adopted, would impose barriers to entry to the provision of interstate and intrastate services in violation of Section 253. In applying this statute, the FCC first determines whether the regulation is proscribed by Section 253(a), which prohibits state laws or regulations that have the effect of prohibiting the ability of any entity to provide any interstate and intrastate telecommunications service. Second, the FCC determines whether it falls within the Section 253's reservation of state authority, which excludes from the scope of preemption state requirements that are competitively neutral, consistent with Section 254 and necessary to preserve and advance universal service, protect the public safety and welfare, ensure continued quality of telecommunications services, and safeguard the rights of consumers.[20]

As described above, the CLEC Plan imposes barriers to entry into the interstate and intrastate telecommunications market. The CLEC Plan requires CLECs to comply with

[19] *See* Pricing Rules at 4 A(2).
[20] 47 U.S.C. § 253(b).

burdensome and unjustified price floors, limits their ability to offer bundled services and volume discounts, and imposes unnecessary service quality standards, related service quality penalties, and onerous monthly reporting requirements, all of which are barriers to entry to the telecommunications services market in Alabama. Moreover, especially since CLECs lack market power in Alabama, and all of their services offerings amount to providing Alabama consumers with a choice of providers, the CLEC Plan's Pricing, Promotions, CSA, Service Quality and Reporting Rules are unnecessary to protect the public interest objectives outlined in Section 253.

C. The CLEC Plan is Inconsistent with the Commission's Stated Objectives for Local Competition.

Instead of creating an environment in which fair and effective local competition flourishes, the CLEC Plan threatens to eliminate competition as a natural regulator of the market for local telephone service. Rather than encouraging the introduction of new technology and modern services in all areas of Alabama, the CLEC Plan imposes burdensome regulations, such as requiring extensive documentation on bundled service offerings, which reduce incentives to invest in new networks in Alabama. Instead of streamlining regulatory procedures that might encumber new entrants, the CLEC Plan imposes unnecessary regulations engineered to curb monopoly market power on new entrants. The CLEC Plan is patently inapposite to the stated local competition objectives of this Commission.

CONCLUSION

For all of the reasons stated above, Knology of Alabama, Inc. respectfully requests that the Commission reject the CLEC Plan and instead adopt the Revised CLEC Plan attached hereto as Attachment A.

Respectfully submitted,

Kimberly H. Adams
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400 South Union Street
Suite 355
Montgomery, Alabama 36104
Telephone: (334) 265-0098

Dated: November 23, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have, this 23rd day of November, 2004, served a copy of the foregoing document on all counsel of record by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:

Frances B. Semmes, Esq.
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OF COUNSEL

ATTACHMENT A

REVISED CLEC PLAN

"Exhibit "A"

PART IV

CLEC PRICE FLEXIBILITY PLAN

1. APPLICABILITY OF THE CLEC PRICE FLEXIBILITY PLAN

The Staff Proposed CLEC Price Flexibility Plan (the "CLEC Plan" or the "Plan") for Competitive Local Exchange Carriers ("CLECs") applies to all telecommunications services offered by CLECs and regulated by the Commission.

2. DEFINITIONS

A. "Bundled Services" are a combination of services offered as a package, whether at a single price or with the availability of the price for one contingent on the purchase of the other(s). A Bundled Service may be comprised of any telecommunications service or non-telecommunication service offered by the CLEC in any combination with telecommunication or non-telecommunication service(s) offered by an CLEC's affiliate and/or with a non-affiliated third party provider.

B. "Contract Service Arrangement" ("CSA") is an arrangement wherein CLEC provides services pursuant to a contract between the CLEC and customers. Such arrangements include situations in which the services are not otherwise available through CLEC's tariffs, as well as situations in which the services are available through CLEC's tariffs, but the CLEC offers those services at prices other than those specified in CLEC's tariffs.

C. ~~"Customer Value Program" (CVP) is the offering of a telecommunications service, combination of telecommunications services, or a telecommunications service or combination of telecommunications services in conjunction with a non-regulated service and/or non-telecommunications service by CLECs to eligible customers in the CLEC's service area. Customers subscribing to such programs will receive ongoing benefits for a duration that may exceed ninety (90) calendar days. Essentially, CVPs are long-term promotions (greater than 90 days in duration).~~

D. "Effective Date" is the proposed date on which a new tariff or tariff revision is considered effective. The Effective Date is based on a specified number of work days following, but excluding, the File Date.

E. "Eligibility Criteria" are the factors used to determine the customers and/or potential customers who would qualify for a Promotion, Customer Value

Program, Marketing/Technical Trial, or Bundled Service: i.e., current services or services a customer must subscribe to, monthly spend, service or usage volume, term commitment, geographic location, such as wire center, and/or any other identifiable characteristic.

F. "File Date" is the official date recorded by the office of the Director of the Commission's Administrative Division (Commission Secretary) for any proposed tariff or tariff revision submitted by a telecommunications provider and accepted by the Commission. The File Date is considered administrative in nature.

G. "Marketing/Technical Trial" is the offering of a telecommunications service, combination of telecommunications services, or a telecommunications service or combination of telecommunications services in conjunction with a non-regulated service and/or non-telecommunications service by a CLEC to eligible customers on a trial basis in the CLEC's service area for technical and/or marketing purposes. Such trials shall be for the purpose of evaluating, in an operating environment, the performance and pricing of the specific service or services in conjunction with other marketing and environmental factors that can influence customer demand.

H. "New Service" is a regulated function, feature, capability, or any combination thereof, which is not offered by the CLEC as of the effective date of this Plan.

I. ~~"Non-discretionary Retail Telecommunication Services" are those services for which the Commission limits the degree of regulatory discretion otherwise provided in the Plan for Retail Telecommunications Services.~~

J. "Promotion" is the offering of a telecommunications service, combination of telecommunications services, or a telecommunications service or combination of telecommunications services in conjunction with a non-regulated service and/or non-telecommunications service by CLECs to eligible customers in the CLEC's service area. Customers subscribing to promotional offerings receive a one-time or short-term benefit that shall not exceed ninety (90) calendar days.

K. "Retail Telecommunications Services" are the telecommunications services, other than Interconnection Services, which are offered by the CLEC and regulated by the Commission.

L. "Telecommunications Service" is the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used.

M. The term "Tier" refers to a category of wire centers demonstrating similar levels of competitive activity and may include only a subcategory of service associated with a wire center (business or residential).

N. ~~Total Service Long Run Incremental Cost ("TSLRIC") is the incremental cost that would be incurred for the entire volume of a service. TSLRIC methodology considers all volume sensitive costs (i.e., costs that change with a change in unit demand) and volume insensitive costs (i.e., costs that do not change with a change in unit demand, but are required by the service) directly caused by and associated with that service.~~

O. "Work Day" is defined as Monday through Friday and excludes weekends and officially recognized State holidays.

3. TARIFFS

CLECs shall file tariffs for all telecommunications services offered by the CLEC and regulated by the Commission, except as specifically exempted herein. Tariffs shall be filed for any proposed change to terms, conditions, and/or prices.

Tariffs shall become effective in accordance with the provisions of subsections (A) – (F) below. The Commission retains the authority to investigate a tariff on its own motion, by intervention of another party, or as the result of a complaint filed pursuant to §37-1-83 of the Code. Any such motion, intervention or complaint shall specifically enumerate the rules and regulations of the Plan and/or Title 37 of the Code of Alabama, 1975 (the "Code") that have been violated.

If the Commission initiates an investigation of a tariff on its own motion, the tariff in question may be suspended for up to ninety (90) days. If the Commission initiates an investigation based on the intervention of another party or the filing of a complaint pursuant to §37-1-83 of the Code, the tariff shall remain in effect pending completion of the investigation and hearing. In lieu of the suspension of proposed tariffs as the result of intervention by another party or the filing of a complaint by another party pursuant to §37-1-83 of the Code, the following procedures will be in effect.

If the Commission initiates an investigation of a tariff based on the intervention or complaint of another party within sixty (60) days of the effective date of said tariff and orders a decrease in a price or prices contained therein, CLECs shall be required to credit the difference between the effective price or prices and the Commission-ordered price or prices to affected customers during that period of time the tariff was effective, but not to exceed one-hundred, fifty (150) days.

A. Tariffs proposing price increases or changes to terms or conditions for telecommunications services offered by CLECs and regulated by the Commission shall be filed with an Effective Date at least ~~ten~~ five (~~10~~5) work days following the File Date.

B. Tariffs proposing price reductions for telecommunications services offered by CLECs and regulated by the Commission shall be filed with an Effective Date at least five (5) work days following the File Date.

~~C.C.Tariffs proposing price increases for Retail Telecommunications Services[1], Switched Access Services, or Special Access Services in Tier I shall be filed with an Effective Date at least five (5) work days following the File Date. Price increases for Retail Telecommunications Services, Switched Access Services, or Special Access Services in Tier II and Tier III shall be filed with an Effective Date at least ten (10) work days following the File Date.~~

~~D. Tariffs proposing price increases for Non-discretionary Retail Telecommunication Services shall be filed with an Effective date at least thirty (30) work days following the File Date.~~

D. ~~E.~~ Tariffs for New Services shall be filed with an Effective Date at least five (5) work days following the File Date.

E.~~F.~~ Tariffs that grandfather and/or eliminate telecommunications services shall be filed with an Effective Date at least ~~twenty-five~~ five (~~2~~5) work days following the File Date. For tariffs that eliminate telecommunications services, the tariff shall provide customers no less than ~~one hundred, eighty~~thirty (~~180~~300) calendar days following the Effective Date during which affected customers will be given the opportunity to subscribe to alternative services before a customer's current services are eliminated.

~~G.~~F. CLECs will not market and/or advertise regulated services by a different name and/or rate structure than that included in the tariff on file with the Commission.

4. PRICING RULES

A. Pricing Rules – General

~~(1)The price for any new or existing service shall equal or exceed its TSLRIC unless: (1) specifically exempted by the Commission based on public interest concerns; or (2) the CLEC in good faith, and upon Commission approval, prices the service in order to meet the equally low price of a competitor.~~

~~(2)No price reductions that will result in prices below TSLRIC will be allowed unless approved by the Commission. No price reductions will be allowed for any existing services that are priced below TSLRIC on the effective date of this Plan, unless approved by the Commission.~~

[1] Except those Retail Telecommunication Services listed as "Non-discretionary".

~~(3)When no TSLRIC study is readily available, the Commission may, at its discretion, consider a surrogate for the TSLRIC cost study as the basis for analyzing the price floor requirement.~~

B. Pricing Rules – Retail Services

~~(4)~~(1) Prices for Retail Telecommunications Services may be adjusted at the discretion of the CLEC.

5. CONTRACT SERVICE ARRANGEMENTS

A. On the fifth work day of each quarter, the CLEC will provide the Commission's Telecommunications Division, with a summary of the CSAs offered in the preceding calendar quarter. The summary will include the identification of the customer, a list of the services offered under the CSA, the retail price for each service from the tariff, the CSA price. The CLEC and the Attorney General agree to keep a comprehensive proprietary agreement in effect at all times to allow the Attorney General access to any proprietary/confidential information provided to the Commission's staff. All CSA information and supporting data is proprietary and will not be released to parties outside the Commission and Attorney General's Office without the written consent of the CSA customer and BellSouth.

~~A.CLEC CSAs shall comply with the rules for the ILEC service area wherein the affected CLEC customers are located (Part I or Part III of this plan, whichever applies).~~

~~B.The Commission retains authority to investigate CSAs. Should any CSA be found in non-compliance with the requirements of 8A to this Plan and/or to be priced below the TSLRIC price floor without the Commission's prior approval, the Commission may take remedial action to include suspending, for any period deemed appropriate by the Commission, the CSA provisions of this Plan for the CLEC.~~

6. PROMOTIONS, CUSTOMER VALUE PROGRAMS, MARKETING/TECHNICAL TRIALS, & BUNDLED SERVICES

CLECs shall comply with the rules for the ILEC service area wherein the affected CLEC customers are located (Part I or Part III of this plan, whichever applies)

7. SERVICE QUALITY

~~A.~~A.CLECs will conform to the service standards_-outlined in Section T-21 of the Commission's Telephone Rules Section T-21 of the Commission's Telephone Rules as currently exist or as subsequently modified. CLECs agree to provide, electronically if feasible and on time, all data and reports required by the Commission Staff for monitoring and/or investigating wholesale and retail service performance. Service quality data and/or reports will be addressed in a Commission Service Quality Workshop and the resulting requirements included as Attachment D (Service Quality).

~~B.~~B.. If the CLEC fails to achieve the Commission's minimum service quality standards or otherwise fails to provide service deemed adequate and safe for the public, the Commission may, after notice and hearing, institute a probationary period for a length of time of the Commission's choosing during which the CLEC will be afforded an opportunity to achieve the Commission's requirements for service. Following the probationary period, if the Commission's service requirements are not achieved, the Commission may ~~require the CLEC to credit customer bills for 1FR/1FB[2] service in affected wire centers each month until the Commission's service requirements are achieved. The amount of the credit shall not exceed 15% of the monthly 1FR/1FB rate and may be retroactive to the beginning of the probationary period.~~institute further proceedings to determine whether it is justifiable to bring the CLEC under the penalty provisions applicable to ILECs.

~~C.~~C. CLECs will abide by all FCC and Commission rules and requirements, as currently exist, or as developed/modified on a going forward basis, for telephone number portability.

8. CUSTOMER NOTIFICATION

A. Unless otherwise provided for in a customer agreement, CLECs will provide customer notification of any price increases to all affected customers either by bill message, bill insert or direct mail at the option of the Company at least seven (7) calendar days before any regulated prices are increased. Notice of a price increase shall include at a minimum the effective date of the price change(s), the existing price(s), and the new price(s).

B. Unless otherwise provided for in a customer agreement, a~~A~~ny affected customer may, within thirty (30) days of the Effective Date of any price increase, elect to cancel his/her subscription to a service that has been increased and CLEC will credit the customer's bill by the amount of the price increase if the increase has been reflected on the customer's bill prior to the cancellation of the service.

9. REPORTING & FILING REQUIREMENTS

A. CLECs will comply with the Commission's filing requirements in either hard copy or electronic format (or both as directed by the Commission). CLECs will provide web access to their Commission approved tariffs and an archive of previously approved tariff pages. Alternatively, CLECs will submit to the Commission, within 5 work days from the effective date of tariff revisions, an

[2] In addition to 1FR/1FB service, the credit applies to all other local calling plans. However, the amount of the credit applied to other local calling plans is based on the tariff rate for 1FR/1FB service.

updated electronic version of their entire tariff and an updated archive of previously approved tariff pages. The archive of previously approved tariff pages is for revisions beginning no later than the implementation date of this Plan.

B. On ~~a monthly~~any annual basis, CLECs will report the number of access lines served in each ILEC wire center.

C. On ~~a monthl~~an annual y basis, CLECs will report the customer name and location of pay phone service provider (PSP) and shared tenant service (STS) access lines served in each ILEC wire center.

D. The Commission shall address other specific reporting requirements for this Plan under a separate docket.

10. CUSTOMER COMPLAINT RESOLUTION

The Commission's existing customer complaint procedures shall remain in effect.

14. COMMISSION OVERSIGHT

A. The Alabama Telecommunications Regulation Plan ("ATRP") is hereby implemented by the Commission as an alternative method of regulating the telecommunications industry in Alabama pursuant to the provisions of Code of Alabama 1975, §37-1-80(b). Nothing in the Alabama Telecommunications Regulation Plan abrogates any statutorily granted authority of the Commission, including Code of Alabama, 1975 §37-1-80(a). The Commission reserves the right to exercise any authority statutorily granted to the Commission depending on the circumstances present in the telecommunications industry in Alabama. The Commission will, however, exercise any statutory provisions which are inconsistent with the ATRP only after notice and a hearing.

B. With the adoption of the ATRP, the Commission will remain actively involved in public interest concerns, the quality of services rendered and received, the availability of new services and technologies and other consumer oriented issues. However, nothing herein shall relieve regulated telecommunications carriers in Alabama from their ongoing obligation to provide financial cost or other related data that the Commission requires.

C. The Commission specifically reserves the right to review and/or revise the Alabama Telecommunications Regulation Plan in the event of rulings and/or decisions from the federal and/or state court systems as well as the Federal Communications Commission which have a major impact on the telecommunications industry in Alabama. Revisions to the ATRP will, however, only be implemented by the Commission following notice and a hearing. The determination of whether a ruling and/or decision shall be reviewed by the Commission for purposes of revising the ATRP or otherwise shall be made by the Commission on its own motion or following a petition seeking such a determination by an interested party.

15. EXPANDED ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

Commission conducted/supervised Mediation shall be available to any telecommunications carrier subject to the jurisdiction of the Commission for purposes of resolving disputes with other carriers. Mediation is a dispute resolution mechanism primarily available for two-party disputes, and is not to be used in substitution of generic dockets or workshops absent express agreement of all parties. The purpose of mediation is to create a voluntary forum whereby the parties may, at their own option, openly communicate with each other with the goal of reaching resolution of issues between the parties. The Alabama Public Service Commission encourages such discussions and will work with the parties to facilitate the mediation.

The Rules governing Mediation as established herein are set forth in Attachment E. The Mediation of disputes arising as the result of negotiations instituted and conducted pursuant to § 252 of the Telecommunications Act of 1996 will continue to be addressed pursuant to Rule T-25 of the Commission's Telephone Rules.

11. COMMISSION REVIEW

A. The Commission will conduct an assessment of this Plan beginning with the first anniversary date of the Plan in 2005 and will complete the assessment within one hundred and eighty (180) days following the first anniversary date. An additional assessment will be conducted, at the Commission's discretion, on the third anniversary date. The need for and frequency of future assessments will be determined at that time.

B. The Commission may not modify or repeal any portion of this Plan without notice and hearing. CLECs or any affected third party may, as market conditions change, petition the Commission for modifications to this Plan. Modifications will only be made following notice and hearing by the Commission.